

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 16 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGELA DUMAIS, a/k/a Angela
Flodstrom, dba Truth in Gold,

Defendant - Appellant.

No. 05-10824

D.C. No. CR-03-00480-DAE

MEMORANDUM *

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Submitted September 8, 2008**

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Angela Dumais appeals from the 57-month sentence imposed following her guilty-plea conviction for wire fraud, in violation of 18 U.S.C. § 1343. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Dumais contends that the district court erred by treating the Sentencing Guidelines as presumptively reasonable and by failing to understand its discretion to impose a sentence of probation. We conclude that there was no procedural error because the sentencing judge considered the specific facts of Dumais's case and indicated that he understood his discretion. *See United States v. Carty*, 520 F.3d 984, 994-95 (9th Cir. 2008) (en banc).

Dumais contends that the district court erred by applying the incorrect standard of proof to determine the amount of loss and the number of victims. He also contends that there was insufficient evidence to establish these numbers. We conclude there was no error because the uncontroverted presentence report contained clear and convincing evidence of the predicate facts. *See United States v. Romero-Rendon*, 220 F.3d 1159, 1161-63 (9th Cir. 2000).

AFFIRMED.